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**INVESTIGATION OF LEGAL BASIS OF ARTICLE 18 AND ITS FUNCTION IN THE
JUDICIAL SYSTEM**

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ABSTRACT

The subject that has been presented by law under the title of making appeal, retrial and illegality in judicial proceedings has been discussed in Procedure for Public and Revolutionary Courts on criminal affairs and in Civil Affairs of Procedure of the said courts. One of the innovations of reform of Public and Revolutionary Courts Act approved in 2002 was evolutions associated with extraordinary methods for making appeal in criminal affairs. The extraordinary methods of appeal in procedure of Public and Revolutionary Courts on criminal affairs approved in 1999 have been formed of article 235 of public appeal; 268 objections by the Attorney General and 272 retrials. The new reform of the latter recent (retrial) has been allowed and other articles 235 and 268 have been obsoleted clearly in article 39 of the said reform. In addition, article 18 of Public and Revolutionary Courts Act, which was previously obsoleted, has been added to law in the said reform with a different content. Article 18 of Public and Revolutionary Courts Act is one of the main articles that have been reformed in different steps. Article 18 of the said law has expressed that, appealable judgments are those judgments that have been presented in laws of Procedure of Public and Revolutionary Courts on Criminal and Civil Affairs approved on September 28 of 1999; legal and judicial commission and June 21 of 2000. Through approving the law, a new establishment was predicted under the title of stopping appeal in articles 256 and

259 of the act. Appealable judgments would be performed based on relevant rules of procedure, which would be investigated in the discussion of appealing based on article 18 of Public and Revolutionary Courts Act. In this regard, an important issue is role judicial system in enforcement of the article and its obligations based on the article and note 2 and executive bylaw. Hence, the study has been conducted using descriptive-documentary method for purpose of investigating legal basis of article 18 and its function in judicial system in this field due to the law.

Keywords: Making appeal, retrial, judicial system, contrary to the religious law

INTRODUCTION

In a judicial case, judges sometime make mistake in regard with matching subjects with rules and understanding evidences and other things; although they spend all of their obsession and precision. In this regard, legislator has proposed some solutions, through which one can void a sentence even after approving it, for purpose of solving judicial mistakes and opposed sentences to principles or evidence and documents. These ways for objection after absolution of a sentence can be referred as extraordinary methods (Pour Ghahramani Goltappe, 2004). One of the innovations of Public and Revolutionary Courts Act approved in 2002 has been related to evolutions associated with extraordinary methods of appeal in criminal affair. Extraordinary ways of appeal in procedure of Public and Revolutionary Courts on criminal affairs approved in 1999 has been formed of articles 235 of public appeal, 268 of objection through Attorney

General and 272 of Retrial. The new reformation has just permitted execution of the latter article and has obsoleted other articles of 235 and 268 clearly in article 39 of the said reform. Article 18 of the Public and Revolutionary Courts Act, which had been obsoleted, previously, has been added to the law in the reform with a different content (Pour Ghahramani Goltappe, making appeal in article 18 of reform act of Public and Revolutionary Courts approved in 2002, 2006). In this regard, the present study has investigated legal basis of article 18 and its function in judicial system.

When a law is reformed, it would be noted that the law has had some deficits that has not been able to respond existing problems and hence, it should be amended. One of the innovations of Public and Revolutionary Courts Act approved in 2002 has is related to evolutions associated with extraordinary methods of appeal in criminal affair. Since

approval of the said Act by 1994, some reforms have been observed till now in the act, which have resulted in many changes in procedure of civil and criminal proceedings.

Article 18 of Public and Revolutionary Courts Act (PRCA) is one of the acts that have been amended during different steps. Article 18 of the said act has stated that definitive and appealable judgments are those judgments that have been approved by Islamic Council in regulations of Procedure of Public and Revolutionary Courts on criminal and civil affairs approved in September 28 of 1999 by Legal Commission and March 28 of 2000. Through approving the act, new establishment was predicted in articles 256 and 259 of the said act under the title of insolvency of making appeal (Bakhtiari, 2012).

In regard with appealable judgments, making appeal would be conducted according to rules of procedure. Article 18 of PRCEA Act, before express abrogation of article 529 of Procedure of Public and Revolutionary Courts on civil affairs approval of 2000 by article 235 of Procedure of Public and Revolutionary Courts has been abrogated impliedly on criminal affairs (Pour Ghahramani, *Ibid*, 2006). Also, article 18 is in contradiction with other articles and can be

only applied for judgments of public and revolutionary courts (Yazdan Zadeh, 1998).

The difference between article 18 of the reform act (2002) and article 18 of PRCA was that article 18 of reform act has no certain similarity with article 18 of PRCA in terms of nature and content; although both of them include definitive judgments. However, they have also some differences in this regard too. The output of the reform in addition to reference to the court was establishment of several branches in Supreme Court under title of Recognition Board of the Supreme Court. The board used to handle objections in terms of difference between legality or religiosity of definitive judgments issues by Public and Revolutionary Courts. It was also responsible for handling cases of procedures according to notes 2 and 5 attached to article 18 of reform act of Public and Revolutionary Court Act. In addition, Head of the Judiciary was permitted to violate any kind of judgment that he recognizes that is against religion and was also able to refer it to competent authority.

The reformed article was approved in 6 notes that the first important issue in regard with the article is possibility of appealing definitive judgments under recognition of Head of Judiciary. Whereby the law, only judgments against religion would be

considered and judgments against law have not been considered (Karimi, 2011). Before reforming the article, based on article 2 on obligations and authorities of head of judiciary, it was possible to make appeal, if the judgment was against religion, not law (Vahedi, 2002). In this case, the issue can be explained, since whereby article 18 of PRCA, branches of Recognition Board of Supreme Court used to handle protested judgments in terms of being against law (Najafi Tavana, 2007).

However, in approved law of 2002, branches of Recognition Board were dissolved and there was remained no way for claiming difference between the judgment and law other than common way of protesting (Mohammad Nejad, 2006). Hence, the forms remain fixed, since reason clarifies that if a judgment is against legal expression, can be appealed like judgments against religion. In this regard, some questions can be raised as follows: has article 18 of reform act legal and juridical basis? Is article 18 in contradiction with Civil Procedure? Are effects of against religious expression different with concept of against law? At the present study, it has been attempted to analyze the issue legally and present final answers for the questions.

Examples of legal judgments and limitation of observing them in definitive judgments of courts

In general, legal regulations in their specific concept can control sentences that have either religious realities such as saying prayers and fast or have no religious reality, but also they have been existed before Islam and Islam Religion has also confirmed and signed it like contract for sales, lease and mortgage. Here, two aspects can be considered as follows: firstly, religious regulations can be considered as supervisor o cases that have been expressed in religious regulations; although they can't be observed in law. Accordingly, one should seek examples that have long background to void valid juridical sentences. The second aspect is related to those cases that have been issued and approved by common law and have become legal because of the mentioned background in field of religious regulations. For example, a general rule on contradiction between judgment and religion that can be recognized by head of judiciary is a verse in An-Nisa Surah/29 "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful." If judgment of the

court is issued against mentioned rule in the verse, Head of Judiciary can refer to the general rule and announce his recognition as one of the dimensions of referring procedure to the competent authority to handle it.

Observance of religious regulations and recognizing them is not surely easy, since it is firstly essential to derive and extract the regulations form valid jurisprudence sources and then supply them for people in a manner that they can be informed of legal and religious rules on them to observe it.

Now, in many existing regulations in Iran that have been also approved by Islamic Council, observance of regulations of religious sentences has been determined clearly. Also, adjustment of lawsuit or criminal complaint and finally, issued sentences with religious regulations and sentences has been emphasized. For example, article 6 of Civil Procedure has claimed in this regard as follows: “contracts that can violate public order or are against good behavior, which is against religious regulations, can’t be applied in the court”.

Article 3 of same act has also made judges responsible for handling lawsuits based on laws and issue required sentence or solve the disputes. Following, it mentions that is Statutes are not clear or there is no rule existed for the presented case, judges should

refer to Islamic valid sources (like Quran and Tradition) or valid legal principles, which are not against religion, to issue sentence for lawsuit. Article 214 of new version of criminal procedure is also related to this issue. The documents have been also inspired from principles 166 and 167 of Constitution. Paragraph H of article 348 of New Civil Procedure has also considered claim for contradiction of judgment with legal or religious regulations among aspects for requesting appeal. It has also mentioned that the judgment would have no defect, if it has been proved. Article 366 of the said act has also provided another context for handling making appeal and voiding appealable judgments along with law. It has also considered observance of religious issues and adjustment of appealable judgment as another element for handling appeal in this season of Civil Procedure. For this purpose, paragraph 2 of article 371 of the said law has stated that one dimension of violation in appealing step is contradiction of the appealable judgment with religious regulations and legal rules. Some jurists have also announced that although recognizing contradiction of judgment with religion is article 18 is similar to “False Offer” in France Law, considered issue in regard with revising judicial judgments in terms of

contradiction with religion is adjusted with making appeal in terms of nature and effects and operation in civil procedure (Karimi A. , 2007).

Examples of religious regulations are various and many regulations have become basis of many current rules because of governance and the term “everything under judgment of reason is under judgment of religion and everything under judgment of religion is under judgment of reason too”; For example, the Principle of No Harm, ownership, presumption of innocence, principle of accident delay, old leaves on his prior, burden of proof on the defendant and oath on the plaintiff and confession of wise persons allowed on them. The principles and many other rules that are right in terms of religion and are rational can be applied like legal sentences in regard with adjusting cases and lawsuits under handling using the religious sentences (Nahreini, 2012).

Necessity of observance of legal sentences’ examples for issuing judgment

In this regard, an important issue is necessity or lack of necessity of referring to religious sentences by the applicant of appeal. In fact, the main question is that whether it is essential such as other aspects of restoration of procedure in civil affairs for applicant to announce and introduce legal sentence to the

Head of Judiciary that is contrary to objecting party’s vote? On the other hand, is it enough to refer article 18 of reformed act as one of the dimensions for restorative procedure?

Under such conditions that judgment is not aware of these religious regulations and accordingly, their judgment passes religious sentences for the mentioned reason from article 18 of reform act, how one can expect applicant of restorative procedure in both criminal and civil affairs to gain religious sentence and consider it as documented and valid basis?

Administration of Justice Act approved in May 30 of 2006 has made obligations on demand for voiding approvals of the government and municipalities in terms of their opposition to the law that is responsible for handling them in competency of Administrative Justice Court. It has approved that reasons for demanding and mentioning the cases of contradiction with law and religion and also legal sentence itself, announced in contradiction with the approvals, should be mentioned and corrected in the application.

An interesting issue is that in regard with contradiction of an approval with the law or religion, Head of Judiciary and Head of Administrative Justice Court have been

allowed to present it after hearing in public board of Administrative Justice Court to ask for voiding the approval. However, vote of Head of Administrative Justice Court in contradiction of an approval with religious regulations is not definitive and can't be reason for violation, but also achievement of this issue is based on opinion of Guardian Council Jurists on the contradiction and also vote of the mentioned jurists would be necessary for public board.

Deadlines for demanding for breaching votes through referring contradiction with religion

According to note 5 of reformed article 18, votes that have become certain before approval of this law would be able to be appealed during 3 months utmost and votes that have become definitive after that would be able to be appealed utmost after 1 month from definition date.

In this note, some objections can be observed as follows:

The first objection on this note is in terms of style of composing the article, since the term "utmost" has been iterated 2 times in it.

The second objection is about source of demand for making appeal in terms of contradiction between religion and issued judgments. This is because; usually source of requesting for appeal should be from date of

announcing definitive judgment, not the date of certainty of the judgment, since issued sentences by appealing courts or Supreme Court would become definitive immediately after issuance of certainty; although still sentenced party is not informed of its certainty and the issued judgment may be announced to the sentenced party after 1-3 months and this can be against human rights. Therefore, it seems that it was necessary for source of demanding for appeal to be in date of announcement of definitive judgment to the sentenced party, no in date of its certainty.

Here, another issue that can be referred based on provisions of note 5 is that after expiration of the said deadline, no judgment can be appealed, except for objection of third party, even if it is against religion. This can't be considered among power points of reformed article 18, since with the expiration of the said deadlines in note 5, issued judgment can find validity of terminated issue completely and hence, legislator has blocked the way for constant objections to issued sentences by the courts unlimitedly.

However, it should be noted that article 12 of bureau and executive agenda of article 18 has appointed that:

If heads of courts of counties and heads of courts of independent districts behave

certainly against appealing sentences that are against religion, they should send the case immediately with a report to Chief Justice, so that he can act according to previous articles of the bureau.

Provisions of the article can cause doubt of indefinite time of the announcement of contradiction on behalf of said officials in this article.

However, it could be mentioned that due to provisions of article 11 of the bureau, which has made announcement of contradiction of the votes with religion essential for Chief Justice of provinces and counties and Head General of Judiciary, the article can be also applied for other officials. On the other hand, as the bill can't be against legal texts, the said officials can just announce the contradiction to Chief Justice in the mentioned deadlines in note 5 of article 18. In fact, announcements out of the deadlines in note 5 can't be qualified for making appeal (Hojjati, 2007).

Manner of informing Chief Justice about votes against religion

Possibility of making appeal on definitive judgments as a result of recognition of Chief Justice is that whereby the law, just votes against religion can be considered and votes against law have not been considered here. Before reforming article 198 and changing it

into its current form in article 18, Reform act of establishing Public and Revolutionary Courts and article 2 of Obligations and Authorities of Chief Justice Act, the votes used to be able to be appealed, if they were against religion, not against law. However, such judgment could be explained by that time, since whereby article 18 of Public and Revolutionary Act, branches of Recognition Board of Supreme Court could appeal protested judgments in terms of their contradiction with law; although recently and whereby the recent reforms, branches of Recognition Board have been dismissed and no way has been left for claiming contradiction between votes and law in Public and Revolutionary Courts, except for common way of objection. In note 2 of reformed article 18, Attorney General, Head of Judicial Organization of Armed Forces and Heads of Judiciary of Counties have just the authority to announce cases, in which a vote has been issued against religion and no text has been predicted for issued sentences that are against law. This can be among weakness points of reform article 18. It seems that sentences against law in the step of making appeal should not be considered appealable, since considering such differentiation among these votes can be ambiguous for authors; unless it is deducted

that as regulations in Iran are same religion, the contradictory votes can be also included in this article. However, the argument is also weak based on former reform article 18, which had considered difference between law and religion. However whereby note 3 of the Public and Revolutionary Courts Act on Civil Procedures, if the judge is Jurist (Mujtahid) and believes that law is against religion, the case would be referred to another branch for making appeal. It could be found easily that one can't consider law and religion same and hence, the two issues should be necessarily be separated from each other (Ibid, 2007).

With the description, the forms are remained intact, since the reason offers that if a judgment is against law, it can be appealed like judgments against religion. The principle of "the judgment of reason is same judgment of religion" also confirms this issue. When reason claims that the judgment is against legal expressions, which violates individual rights, and it should be null and void, law would also have similar order and hence, the considered differentiation in the reformed article between law and religion is an improper differentiation. However, it should be noted that what the aim is by judgment against religion. According to note 1 of article 18, one of the contradictions of

judgment with religion is contradiction of the judgment with properties of jurisprudence and in regard with disputes among scholars, the considered criterion would be practice or idea of jurists.

Considering provisions of the note indicates that if there is religious dispute among scholars on an issue, famous idea of jurists would be considered. Hence, in regard with the disputes, famous idea of jurists and order of Supreme Leader seems to be the best way. If the order of Supreme Leader is different from famous idea of jurists, according to explicit text of note 1 of the article, Head of Judiciary can use his authority to express his objection on one of the judgments as criterion of contradiction between religion and judgment. In terms of practice and execution, the manner of recognizing the contradiction has been determined in reform article 18 for Public and Revolutionary Courts Act and articles 18 and 40 of Administrative Justice Court Act (approved on February 25 of 2006).

CONCLUSION

According to the mentioned, through investigating article 18 of reform of Public and Revolutionary Courts Act, it could be found that the article is in position of presenting extraordinary ways of objection on judgments. However, the aim by

approving the article is different from it in practice.

Legislator has permitted restorative procedure among former extraordinary ways. However, after restorative procedure, if a judgment is against law and religion, it could be submitted to Branch of Criminal Recognition that is one the branches of Supreme Court. The recognition branches, which are formed of 5 judges from Supreme Court, would handle the case, regardless of type of case (important or unimportant). Verification and handling cases in recognition branch is also against the principle of natural form and this can cause nothing in recognition branches other than work compaction.

Obtained results from the study are as follows:

- According to the case of article 18, handling is extraordinary, not ordinary. However, as sentences party has absolutely the right to request for making appeal during 1 month in note 2 of article 18 through claiming that the judgment is against law or religion. Ordinarity of this kind of handling would be empowered.
- In addition to judicial officials, the sentenced party can also request for making appeal. In addition, request

for handling is possible in both criminal and civil affairs.

- Mentioning the term “Appealable” in text of article 18 and the term “request for making appeal” in note 2 and at the end part of article 18 indicates that recognition branch handles nature of the lawsuit with its authority and issues desirable judgment; meaning that handling is making appeal, not appeal to the Supreme Court.
- Contradiction of judgment with religion has been considered as judgment in cases of silence of law with certainties of jurisprudence.
- According to note 1 of article 18, it could be found that the legislator in any case has been tended to enforce the law not only in regard with silence of law, but also in regard with existence of law, if the Mujtahid judge has regarded it against religion. However, such rule may has been confirmed and approved by Guardian Council.

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